

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SECOND APPEAL No. 99 of 1989****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RAJENDRA BROTHERS - Appellant(s)**Versus****SHRI MOTA ANKADIA SEVA SAHKARIMANDALI LTD - Defendant(s)**

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Appearance :

MR JR NANAVATI for Appellant(s) : 1,

NONE for Respondent(s) : 1,

MR AY KOGJE AS AMICUS CURIAE

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 13/11/2006****ORAL JUDGMENT**

1.The appeal has been admitted for hearing the
parties on the following substantial question of

law.

“Whether in the facts and circumstances of the case, Civil Court had jurisdiction to deal with or decide the suit filed by the appellant having regard to the provisions contained in sub-section [1] of Section 96 of the Gujarat Cooperative Societies Act?”

2. Learned counsel for the appellant submits that the appellant-M/s. Rajendra Brothers is neither a member of the respondent Cooperative Society nor is a person who had taken any loan from the said society, but it happens to be a creditor of the said society who had supplied certain cloths worth Rs. 13,550/- to the defendant/respondent-society on 8.12.79. According to the appellant-plaintiff, despite request and reminders, as the money was not paid, it was required to file the suit. In the suit, the plaintiff claimed Rs. 13550/-, the principal amount and sum of Rs.1755/- as interest at the rate of 18% from the date of the sale up to the date of the suit, in all, a sum of Rs. 15305/- was claimed. The defendant

society appeared before the learned trial court and submitted that the suit was not maintainable, transaction was sham and bogus and they would not be required to pay anything. The learned trial court, after hearing the parties held that the plaintiff was successful in proving that it had supplied the goods on credit. Holding that the Civil Court had jurisdiction, it decreed the suit. The respondent society, being aggrieved by the said order, took up the matter in Regular Civil Appeal. Learned first appellate court, held that the plaintiff had supplied the goods on credit, credit money was not paid. It further held that the Civil Court had no jurisdiction to entertain the suit, therefore, the plaintiff is before this Court. Despite service, none appeared for the respondent society, therefore, I requested Mr. A.Y. Kogje, learned counsel, ordinarily appearing for the State, to assist the Court as Amicus Curiae.

3. Shri J.R. Nanavati, learned counsel for the appellant submits that, in view of the Division Bench judgment of this Court in the matter of **Rasiklal Patel & ors. v. Kailashgauri Ramanlal**

Mehta & ors, reported in 1971 [12] G.L.R. 355 and yet another Single Bench judgment of this Court in the matter of **Mahavir Cotton Co. vs. Saurashtra Cooperative Spinning Mills Ltd., reported in 1995 [2] Vol. 36 [2] G.L.R. 1394**, the learned first appellate court was unjustified in holding that the Civil Court had no jurisdiction to decide the matter.

4. Mr. A.Y. Kogje, learned counsel, referring to the case in the matter of **Deccan Merchants Cooperative Bank Ltd. v. M/s. Dalichand Jugraj Jain andn Others, reported in AIR 1969 SC 1320**, submits that in a case like present, the words "touching the business of the society" and the words "a person claiming through a member" would assume importance and in the present case, as the dispute is in relation to the business of the society, it must be held that the Civil Court had no jurisdiction.

5. From the judgment of the Supreme Court in the matter of **Deccan Merchants Cooperative Bank Ltd. [supra]**, it appears that the Supreme Court was of the opinion that the dispute must be between the following:-

"91. Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if both the parties thereto are one or other of the following:

[a] a Society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative or any deceased officer, deceased agent or deceased servant of the society, or the liquidator of the society;

[b] a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

[c] a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions under the provisions of Section 45, and any person claiming through such a person;

[d] a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under Section 45, whether such a

surety is or is not a member of the society; [e] any other society, or the Liquidator of such a society."

6. The Supreme Court was also of the opinion that if the dispute touches the business of the society within the meaning of Section 91, it is not a dispute between a society and a member or a person claiming through a member. The Supreme Court further observed that before a person can be said to be claiming through a member, the claim should arise through a transaction or dealing which the member entered into with the society as a member. The Supreme Court was very candid in observing that if a person entered into a transaction with the society not as a member, but as a stranger, then, he must be covered, if at all, by the provisions of Section 91 [1][a] or [c]. But once, it is held that the original transaction was entered into by the member with the society as a member, then, any person who claims right or title through that member must come within the provisions of Section 91[1][b]. Not only that, the Supreme Court, disapproving the findings recorded by the Nagpur Bench and also disapproving the findings also recorded by

the High Court of Madhya Pradesh, observed that the view expressed by Madras, Bombay and Kerala High Court would be preferable. From the judgment of the Supreme Court, it would clearly appear that the Supreme Court was of the opinion that a dispute concerning the property purchased by the society from one of its member would not be a dispute touching the business of the society. If that be so, then, the dispute between the parties cannot be said to be a dispute touching the business of the society entered into between the society and the member of the society. It was a straight transaction between a creditor and purchaser on credit. A comparative study of Sec.91 of Maharashtra Cooperative Societies Act and Sec.96 of the Gujarat Cooperative Societies Act would show that the provisions are almost pari-materia. The judgment in the matter of Rasiklal [supra] and Mahavir Cotton would really hold the field.

7. The first appellate court, in the opinion of this Court was not justified in holding that the suit was not cognizable by the Civil Court. That part of the finding recorded by the first appellate court is set aside.

8. In view of the concurrent findings recorded by the two courts below, I must hold that the plaintiff had been successful in proving its claim. The decree passed by the learned first appellate court is set aside and the decree granted by the learned trial court is restored. No costs as the respondent is not represented despite service.

9. Let a the decree be framed accordingly.

[R.S. GARG, J.]

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